

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOSE SALAZAR-MERCADO,)
)
Plaintiff,)
)
v.) 1:13CV288
)
UNITED STATES OF AMERICA,)
)
Defendant(s).)

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a federal prisoner, previously submitted a Motion for Return of Property listing his criminal case number, 1:10CR300-1, which the Court construed as a civil case based on a Motion for Return of Property and later dismissed without prejudice to Plaintiff refiling the Motion on the proper forms and accompanied by the proper filing fee or an application to proceed *in forma pauperis*. Plaintiff has now filed a “Motion to Quash” the civil case and to “return” the previous Motion to his criminal case. (Docket Entry 5.) There are two problems with this request. First, the Court already entered Judgment dismissing the civil action and the case is now closed. (Docket Entry 4.) Second, as explained to Plaintiff in the Order and Recommendation (Docket Entry 2) setting out why dismissal was proper, a motion for return of property filed after the completion of criminal proceedings is a civil action subject to the fee provisions of 28 U.S.C. § 1915. See United States v. Jones, 215 F.3d 467 (4th Cir. 2000). Plaintiff’s criminal case is complete, which is why the Court properly treated his earlier Motion as a separate civil action. Accordingly, Plaintiff’s current

Motion seeking to “quash” the civil action and “return” his Motion for Return of Property to the criminal case should be denied. If Plaintiff wishes to pursue his claim as to the property, he should file a motion for return of property using the forms previously provided by the Court.

IT IS THEREFORE RECOMMENDED Plaintiff’s “Motion to Quash” (Docket Entry 5) be denied without prejudice to his filing a proper motion for return of property on the forms and accompanied by the applicable filing fee or an application to proceed *in forma pauperis*.

This, the 20th day of August, 2013.

/s/ L. Patrick Auld
L. Patrick Auld
United States Magistrate Judge